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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 122

MUSKEGON MOTOR SPECIALTIES COMPANY,
a Delaware Corporation,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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To the Honorable Supreme Court of the United States:

Muskegon Motor Specialties Company, a Delaware corporation, petitioner herein, respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit to review the decree and order entered in this case on April 13, 1943 (R. 207), (opinion 134 F. 2nd. 904, R. 208) shows as follows:

I. SUMMARY STATEMENT OF MATTER INVOLVED

The proceeding in the Circuit Court of Appeals was upon a petition to review a decision of the United States Board of Tax Appeals promulgated on November 4, 1941 determining deficiencies in income and excess profits taxes against petitioner for the year 1934 in the respective amounts of $5,596.51 and $2,035.10. The opinion of the Board of Tax Appeals is reported at 45 B. T. A. 551.

The petitioner corporation was organized in 1928 and acquired all the outstanding stock of two Michigan corporations, L. O. Gordon Manufacturing Company and Muskegon Motor Specialties Company (hereinafter called respectively Gordon and Muskegon-Michigan), which corporations shortly thereafter conveyed all of their property to the petitioner and were then liquidated and dissolved. The petitioner in computing its income and excess profits taxes for the year 1934 computed depreciation on the basis of cost to it of the assets so acquired by it, contending that the transaction was not a reorganization as defined in the applicable Revenue Act, but was a sale by the stockholders of Gordon and Muskegon-Michigan; and that in any event, an interest or control of 50 per centum of the property transferred did not, after the transfer, remain in the same persons or any of them (see Sec. 113 (a) (7) Revenue Act of 1934). The Commissioner of Internal Revenue computed the depreciation on the basis of the cost to the two corporations, former owners of said assets, contending that under the Revenue Act the transaction was a reorganization and that a 50 per centum inter-

est or control did so remain in the transferors. The Board of Tax Appeals sustained the Commissioner and the Circuit Court of Appeals affirmed the decision of the Board (R. 208, 134 F. 2nd 904). A detailed statement of the facts of the transaction is reserved for a more appropriate place in the brief in support of this petition.

II. BASIS UPON WHICH THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS

(a) This Honorable Court has jurisdiction to review the judgment of the Circuit Court of Appeals in this case under the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938; Title 28, U. S. C. A. 347.

(b) The statutes of the United States involved in this proceeding are the Revenue Act of 1928, Sec. 112 (i) (1); the Revenue Act of 1932, Sec. 112 (i) (1), Sec. 113 (a) (7); the Revenue Act of 1934, Sec. 112 (g) (1) and (h), Sec. 113 (a) (7) and (12), Sec. 113 (b), Sec. 114 (a); Internal Revenue Code Sec. 113 (a) (7). See also G. C. M. 7472, C.B. IX-1, page 184, 191; the pertinent provisions of all of which are set forth in the brief annexed hereto (p. 13 to 17).

(c) The decree of the Circuit Court of Appeals for the Sixth Circuit now sought to be reviewed was entered by said Court on April 13, 1943 (R. 207), and is final and erroneous.

III. STATEMENT OF QUESTIONS PRESENTED

The general question presented is whether the petitioner, in computing its income and excess profits taxes for the year 1934, is entitled to compute depreciation of the depreciable property, acquired in the transaction above described, on the cost to it of such property; or whether it must use the basis of net unrecovered cost of such property to Gordon and Muskegon-Michigan. Involved in the foregoing are the following subordinate questions:

(a) Was the transaction by which the petitioner acquired the property of Gordon and Muskegon-Michigan a reorganization as that term is used in the applicable Revenue Act, or was it a sale or exchange?

(b) Who were the transferors of said property to the petitioner? Were they the Gordon and Muskegon-Michigan corporations or were they their stockholders?

(c) Was the transaction by which the petitioner acquired the stock and property a tax free transaction?

(d) After the transfer of said property to the petitioner did a 50 per centum interest in said property so transferred "remain in the same persons or any of them"?

(e) After the transfer of said property to the said petitioner, did a 50 per centum control of the property transferred "remain in the same persons or any of them"?

IV. REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

(a) The decision of the Circuit Court of Appeals for the Sixth Circuit decides important questions of Federal law which have not been but should be settled by this Court.

(b) The Circuit Court of Appeals has decided Federal questions in a way probably in conflict with applicable decisions of this Court.

Wherefore, your petitioner prays that this Honorable Court will grant its writ of certiorari directed to the Circuit Court of Appeals for the Sixth Circuit, requiring the complete record of this cause in said Court to be certified to this Court and that this Court will thereupon proceed to correct the errors herein complained of.

And your petitioner will ever pray, etc.

MUSKEGON MOTOR SPECIALTIES COMPANY

By Hal H. Smith,
Counsel for Petitioner.